

Message Text

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ACTION AF-06

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R 141445Z MAR 75

FM AMEMBASSY CAPE TOWN

TO SECSTATE WASHDC 4477

INFO AMCONSUL DURBAN

AMCONSUL JOHANNESBURG

AMEMBASSY PRETORIA

UNCLAS CAPE TOWN 0295

E.O.611652:N/A

TAGS :EGEN,ELAB,BBAK,SF

SUBJ :SECTION 2 OF SECOND GENERAL LAW AMENDMENT ACT

REF : JOHANNESBURG 362, CAPE TOWN A-138

1. MIDLAND CHAMBER OF INDUSTRIES, PORT ELIZABETH, INCLUDED FOLLOWING INFORMATION ON SUBJECT AS GUIDANCE TO MEMBERS IN ITS WEEKLY BULLETIN OF FEBRUARY 24.

2. AFTER QUOTING SECTION TWO OF THE ACT, BULLETIN STATED THAT WORDING OF THE PROHIBITION IS EXTREMELY WIDE AND SOUTH AFRICAN FEDERATED CHAMBER OF INDUSTRIES THEREFORE SECURED THE FOLLOWING EXPLANATION FROM THE DEPARTMENT OF COMMERCE:

QTE 1) 'LETTER OF REQUEST' ARE ADDRESSED THROUGH DIPLOMATIC CHANNELS FOR THE APPOINTMENT OF A 'COMMISSION ROGATOIRE'.

(NOTE-A 'LETTER OF REQUEST' IS THE DIPLOMATIC PROCESS WHEREBY FOREIGN COURTS SEEK THE ASSISTANCE OF THE COURTS OF THE REPUBLIC IN SECURING EVIDENCE TO BE UTILIZED IN A CASE PENDING BEFORE THE FOREIGN COURT.)

2) THE ORDER OR DIRECTION CONTEMPLATED IN THE LEGISLATION MUST EMANATE FROM, OR BE ISSUED BY AN OFFICIAL OR BODY UNDER EXPRESS OR IMPLIED STATUTORY POWER.

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3) IN ALL INSTANCES WHERE A PERSON OVER WHOM THE LAW COURTS OF

THE REPUBLIC HAVE JURISDICTION IS REQUIRED TO FURNISH ANY INFORMATION AS TO ANY BUSINESS, WHETHER CARRIED ON IN OR OUTSIDE THE REPUBLIC, IN COMPLIANCE WITH ANY ORDER, DIRECTION OR LETTERS OF REQUEST EMANATING FROM OUTSIDE THE REPUBLIC AND ADDRESSED TO HIM, PERMISSION WILL FIRST HAVE TO BE OBTAINED FROM THE HONORABLE THE MINISTER OF ECONOMIC AFFAIRS BEFORE THE INFORMATION MAY BE SUPPLIED.

4) PERMISSION TO SUPPLY THE INFORMATION CONTEMPLATED IN THE LEGISLATION WILL ALSO HAVE TO BE OBTAINED FROM THE MINISTER IF A SOUTH AFRICAN COMPANY IS REQUIRED TO SUPPLY THE INFORMATION TO ITS PARENT COMPANY OUTSIDE THE REPUBLIC IN RESPONSE TO AN ORDER OR DIRECTION ADDRESSED TO THE LATTER COMPANY.

5) NO PERMISSION UNDER THE LEGISLATION IS REQUIRED BY ANY COMPANY OPERATING IN THE REPUBLIC, FOR THE FURNISHING OF INFORMATION TO ITS FOREIGN PRINCIPAL IF THE INFORMATION IS REQUIRED BY THE PRINCIPAL MERELY FOR THE CONDUCT OF ITS BUSINESS WITH THE SOUTH AFRICAN COMPANY.

HOWEVER, CARE SHOULD BE EXERCISED WHEN INFORMATION IS REQUESTED BY A FOREIGN PRINCIPAL FROM A PERSON OVER WHOM THE LAW COURTS OF THE REPUBLIC HAVE JURISDICTION IF THE INFORMATION IS NOT NORMALLY SUPPLIED OR NOT NORMALLY REQUIRED BY THE FOREIGN PRINCIPAL TO CONDUCT ITS BUSINESS WITH THE SOUTH AFRICAN COMPANY. IN SUCH CIRCUMSTANCES APPLICATION FOR PERMISSION TO SUPPLY THE INFORMATION CONCERNED SHOULD ALSO BE OBTAINED FROM THE MINISTER.

6) ANY APPLICATION FOR PERMISSION CONTEMPLATED IN SECTION 2(1) OF ACT 94 OF 1974 SHOULD BE ADDRESSED TO THIS DEPARTMENT. THE APPLICANT SHOULD INDICATE FROM, OR BY WHOM THE ORDER OR DIRECTION EMANATES OR WAS ISSUED AND GIVE FULL PARTICULARS OF THE INFORMATION REQUIRED.

MEMBERS WHICH AS CALLED UPON TO FURNISH INFORMATION BY FOREIGN CONCERNS AND WHICH HAVE DIFFICULTY IN DECIDING AS TO WHETHER OR NOT THE SUPPLY THEREOF WILL MAKE THEM BREAK THE LAW, SHOULD RAISE THE MATTER WITH THE DEPARTMENT OF COMMERCE. UNQTE.

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3. FOR PRETORIA AND JOHANNESBURG: WE ARE AWAITING REPLY FROM MR. MARTIN, DEPUTY DIRECTOR CAPE TOWN OFFICE OF FEDERATED CHAMBER, TO QUERY WE MADE ASKING WHETHER EXPLANATION QUOTED BY MIDLAND CHAMBER IS THE SAME AS THAT REPORTEDLY CONTAINED IN AN FCI DOCUMENT OF JANUARY 31 (FCI REFERENCE 3/9/11), WHICH HAD BEEN CITED TO US AS CONTAINING ADVICE OBTAINED FROM DEPARTMENT OF COMMERCE BY FCI'S LEGAL ADVISOR, MR. POOLMAN. MARTIN WAS UNCERTAIN WHETHER DOCUMENT WE CITED WAS DIRECTED TO MEMBER CHAMBERS

OR WAS AN INTERNAL FCI PAPER, BUT IN ANY CASE HOPED TO BE
ABLE TO PROVIDE US WITH COPY. HE COMMENTED THAT THIS WAS SUBJECT
ON WHICH EVERYONE CONTINUED SEEK CLARIFICATION.

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